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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/520,387	12/19/2005	Rita Boge Andersen	GRP-0092	5168

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EXAMINER	
CORBIN, ARTHUR L	

ART UNIT	PAPER NUMBER
1794	

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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/520,387

Applicant(s)

ANDERSEN ET AL.

Examiner

Arthur L. Corbin

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 01-03&11-07-05,07-26,11-10&11-22-06.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-20 and 23-34 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☒ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-20 and 23-34 is/are rejected.
- 7) ☒ Claim(s) 2,3,5,8-10,15,20,24 and 32 is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>See Continuation Sheet</u> . | 6) <input type="checkbox"/> Other: _____ |

Continuation of Attachment(s) 3). Information Disclosure Statement(s) (PTO/SB/08), Paper No(s)/Mail Date
:010305,110705,072606,111006,112206.

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1. Claims 2, 3, 5, 8-10, 15, 20, 24 and 32 are objected to because of the following informalities: In claims 2, 3, 5 and 8-10, line 2, "a" should be cancelled. Also, in claim 3, line 2, "are" should be "is". In claim 15, "provides" should be singular. In claim 20, "comprises" should be singular. In claim 24, "whereby" should be "wherein". In claim 32, line 2, "resin comprises" should be changed to "resins comprise". Appropriate correction is required.

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 1 and 25-33 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 1 is indefinite since it is unclear what is intended by "incorporated gum base" (line 7). There is no antecedent basis in claim 23 for "the chewing gum granulate" (claims 25, 26, 28 and 29). Also, claim 25 is indefinite since it is not clear what is intended by "on conventional gum base" (lines 4-5). Claims 25-33 should be method claims since each depends upon method claim 23.

Corrections are required without new matter.

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 1-5, 8-11, 15 and 23-32 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Yang (EP 0 221 850, cols. 3, 7-11) or Cherukuri et al (cols. 2-8

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and claim 1). Both primary references disclose compressed chewing gum tablets composed of granules including synthetic elastomer gum base, e.g. polyvinylacetate, or natural elastomer gum base, sweetener, flavor and magnesium stearate. The presence of any of wax, compression aid, lubricant, anti-adherent and glidant is optional, and thus, may or may not be present. The tablets are prepared by blending two different chewing gum granulates, including synthetic or natural gum base elastomer, a plasticizer, flavor and sweetener including sorbitol and then compressing the blend into a tablet.

6. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

7. Claims 6, 7, 12-14, 16-20, 33 and 34 are rejected under 35 U.S.C. 103(a) as being unpatentable over Yang or Cherukuri et al. Finding the optimum water content of the gum tablet (claim 6) and the optimum amount of each component in the gum tablet (claims 12-14 and 20) would require nothing more than routine experimentation by one reasonably skilled in this art. Further, it would have been obvious to use the magnesium stearate in either primary reference as a lubricant in the outer layer of the tablets since the purpose of the magnesium stearate is to reduce friction between the inner die wall and the tablet edge during ejection and to prevent capping (Cherukuri et al, col.2, lines 18-22 and col. 4, lines 49-60 and Yang, col. 10, lines 3-8).

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8. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. A nonstatutory obviousness-type double patenting rejection is appropriate where the conflicting claims are not identical, but at least one examined application claim is not patentably distinct from the reference claim(s) because the examined application claim is either anticipated by, or would have been obvious over, the reference claim(s). See, e.g., *In re Berg*, 140 F.3d 1428, 46 USPQ2d 1226 (Fed. Cir. 1998); *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) or 1.321(d) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent either is shown to be commonly owned with this application, or claims an invention made as a result of activities undertaken within the scope of a joint research agreement.

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

9. Claims 1-20 are also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 1-27, 32 and 33 in copending Application No. 10/520,173. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to select any additives, including sweeteners and flavors, to be included in the gum center of the claims in 10/520,173 and for the barrier layer in the claims of 10/520,173 to fully encapsulate the gum center simply depending upon desired results, personal appeal and consumer preference. This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented

10. Claims 1-20 and 23-34 are further provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over the claims

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in copending Application No. 11/028,684. Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to include sweeteners and flavors in the gum granules and compressed gum tablets in the claims of 11/028,684 since it is well known to prepare chewing gum products which include sweeteners and flavors.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

11. Claims 23-34 are also provisionally rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 28-31 of copending Application No. 10/520,173 in view of Yang (col. 11). Although the conflicting claims are not identical, they are not patentably distinct from each other because it would have been obvious to prepare two groups of gum granules and then blend the two groups and compress them in the claimed method of 10/520,173 since it is well known to prepare a chewing gum tablet by such a technique, as evidenced by Yang.

This is a provisional obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Arthur L. Corbin whose telephone number is (571) 272-

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1399. The examiner can normally be reached on Monday-Friday from 10:30 AM to 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Milton I. Cano, can be reached on (571) 272-1398. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Arthur L Corbin
Primary Examiner
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